

Prepared By:
City of Harrisburg
301 E Willow St, PO Box 26
Harrisburg, SD 57032
(605) 743-5872

RESOLUTION 2022-06

A RESOLUTION TO APPROVE A PETITION FOR ANNEXATION OF CERTAIN PROPERTY CONTIGUOUS TO THE CITY OF HARRISBURG, LINCOLN COUNTY, SOUTH DAKOTA.

WHEREAS, the City of Harrisburg has received a written petition for voluntary annexation signed by not less than three-fourths of the registered voters and by the owners of not less than three-fourths of the value of the territory sought to be annexed to the municipality;

WHEREAS, certain territory, hereinafter more particularly described, is contiguous to the City of Harrisburg, South Dakota; and

WHEREAS, the City of Harrisburg has a Pre-Annexation Agreement for the Tom Sawyer Addition and is providing water and sanitary sewer services to that subdivision per the Agreement; and

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of Harrisburg, South Dakota, that the boundaries of said City of Harrisburg, South Dakota, be and they hereby are extended to include the area contiguous to the City of Harrisburg described as follows:

Lots 1-9 of Block 1 (approximately 15.58 acres), Lots 1-5 of Block 2 (approximately 9.62 acres) and public rights-of-way (approximately 3.42 acres) of the Tom Sawyer Addition, located in the NW¼ of Section 34, T100N, R50W, 5th P.M., Lincoln County, South Dakota. (Approximately 28.62 acres)

NOW THEREFORE BE IT FURTHER RESOLVED by the City of Harrisburg that the within-described territory is hereby designated Urban Service District, thus amending Ordinance #2006-016;

NOW THEREFORE BE IT FURTHER RESOLVED by the City of Harrisburg that the zoning for the within described territory be designated as A-2 Rural Residential District for Block 1 and GB, General Business District for Block 2.

NOW THEREFORE BE IT FURTHER RESOLVED by the City of Harrisburg that this resolution shall become effective according to law.

RESOLUTION 2022-06, Page 2 of 2 pages.

Dated at Harrisburg, South Dakota, this 3rd day of May, 2022.

COMMON COUNCIL OF THE CITY OF HARRISBURG

Seal:

Attest:

Mayor

Finance Officer

Published: May 12, 2022

Effective: June 1, 2022



We, the undersigned, hereby state that we constitute not less than three-fourths of the legal voters and further constitute the owners of not less than three-fourths in value of the within-described territory contiguous to the City of Harrisburg. We hereby petition the City Council of the City of Harrisburg to annex the following described territory pursuant to SDCL 9-4-1:

Proposed land use (zoning) of property to be annexed: A-2 (Block 1) and GB (Block 2)

Petitioner address: 47391 Tom Sawyer Trail Harrisburg, SD 57032

Signatures:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears slightly aged or off-white. There are some faint, small brown spots or smudges near the center-left area. The edges of the paper are slightly irregular.

This instrument prepared by:
A.J. Swanson
ARVID J. SWANSON P.C.
27452 482nd Avenue
Canton, SD 57013
(605) 743-2070

**AGREEMENT FOR PRESENT DEVELOPMENT AND
FUTURE ANNEXATION OF PROPERTY
BY OWNER'S VOLUNTARY PETITION
BY AND BETWEEN
DAKOTALAND BUILDERS, INC.,
TOM SAWYER ADVENTURES, LLC.,
AND
CITY OF HARRISBURG (SOUTH DAKOTA)**

This AGREEMENT FOR PRESENT DEVELOPMENT AND FUTURE ANNEXATION OF PROPERTY BY OWNER'S VOLUNTARY PETITION BY AND BETWEEN DAKOTALAND BUILDERS, INC., TOM SAWYER ADVENTURES, LLC., AND CITY OF HARRISBURG (this "Developer-Owner-City Agreement") is made and entered into the date(s) below written by and between and DAKOTALAND BUILDERS, INC. ("Developer"), a South Dakota business corporation, by and through its President duly authorized to act, TOM SAWYER ADVENTURES, LLC. ("Owner"), a South Dakota limited liability company, by and through its Manager, and the CITY OF HARRISBURG ("City"), a municipal corporation existing under the laws of the State of South Dakota, by and through its Mayor, having been duly authorized so to act in accordance with law and pursuant to the provisions of law (SDCL § 9-4-1.1), upon the following premises and conditions:

Whereas, Developer is proposing to develop, for itself and pursuant to arrangements with the fee owner, TOM SAWYER ADVENTURES, LLC ("Owner"), that certain real estate now legally described as:

**TRACTS 1 AND 2 OF CINKLE'S ADDITION, AN ADDITION IN THE
NORTHEAST QUARTER (NE1/4), SECTION 34, TOWNSHIP 100
NORTH, RANGE 50 WEST OF THE FIFTH P.M., LINCOLN COUNTY,
SD (the "Property"),**

Whereas, Developer is currently proposing to rezone and thereafter develop the Property in accordance with a rezoning petition filed with the Lincoln County (SD) Planning & Zoning Board ("LCP&Z"), namely, 07-REZ-001, whereby the Property would be zoned as a planned development district (under the zoning ordinance of Lincoln County, hereafter referenced as "LCZO") and to be known as the "TOM SAWYER PLANNED DEVELOPMENT DISTRICT" (hereafter, "TSPD"),

Whereas, the Property is not contiguous to City, cannot be presently annexed, and is not within the current zoning jurisdiction of City (Property is presently within the zoning jurisdiction of Lincoln County), while being within the "Major Street Plan" or growth management area of City, as has been understood and recognized by the comprehensive plans of both City and Lincoln County, and subject also to the subdivision ordinance of the City and City's recognized platting jurisdiction as provided by South Dakota law, and

Whereas, Developer, Owner and City wish by means of this Agreement to memorialize and appropriately publish their several mutual understandings and agreements pursuant to which the Property, by terms of an amended rezoning petition may be rezoned by recommendation of LCP&Z and the further action of the Lincoln County Board of Commissioners ("LCBOC"), allowing Developer to proceed with development at this time, provided City, with consent of Lincoln County, shall exercise preliminary and final planning jurisdiction and platting jurisdiction, and further,

Whereas, upon the occasion of (a) any portion of the City's limits becoming contiguous with any boundary of Property, and (b) City is prepared to provide services to said Property, then and in such events, Owner hereby consents, irrevocably, for itself and on behalf of any other future proprietor, owner or person in interest in all or any portion of the Property, to cause the entirety of said Property to become annexed to City, voluntarily, by means and methods consistent with current law, as more fully provided herein, it being Owner's intention that this Agreement be recorded and be viewed as Owner's voluntary petition for annexation at the moment of the event or events as are described in Section 6(B), following,

NOW THEREFORE, each and every of the foregoing premises being duly considered and agreed to, the parties do further stipulate and agree as follows:

SECTION 1. Current Rezoning Process for Property.

(A) Developer seeks to amend the rezone petition ("PRZ") now pending before LCP&Z as 07-REZ-001, so as to propose development of the Property in a manner outlined in this Agreement. So long as Developer actions and proposals conform to this Agreement, City agrees not to oppose or resist the recommendations or decisions for granting or approval thereof by LCP&Z or LCBOC. However, City may monitor and participate in all further proceedings before LCP&Z or LCBOC to ensure the county zoning outcome is consistent with development as envisioned by this Agreement.

SECTION 2. Lincoln County Development Plans for Property.

(A) In connection with the PRZ (07-REZ-001), Developer additionally seeks approval from LCP&Z with respect to an amended Initial Development Plan ("AIDP") for TSPD, under the AIDP, Developer proposes commercial-type development for SUBAREA A of TSPD, and single-family residential development for SUBAREA B of TSPD.

(B) The parties further agree that as Developer undertakes the development-approval steps provided for in Section 4 of this Agreement (hereafter, "City Approvals"), prior to

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recording a plat for TSPD, Developer may proceed with a Final Development Plan ("FDP") for TSPD with LCP&Z, consistent with the results of City Approvals.

SECTION 3. Mutually Agreed Zoning & Planning Outcomes for Development of Property.

(A) Consistent with Developer's AIDP, SUBAREA A of TSPD is projected to be platted into Lots 1 through 7, inclusive.

(B) City understands and agrees that Developer plans and intends to construct an office and contractor's shop and yard upon Lot 7 of SUBAREA A (hereafter referenced as "Developer's Shop"). It is further understood and agreed that such use is and will be lawful under LCZO, being described as a use of the "Commercial District" incorporated into SUBAREA A of TSPD. Prior to annexation by City, Developer shall not be required to obtain any further land use (zoning) approval from City with respect to Developer's Shop.

(C) City understands and agrees that Developer further plans and intends to construct certain warehouse / storage facilities upon Lot 1 of SUBAREA A (hereafter referenced as "Storage Units"). It is further understood and agreed that such use is and will be lawful under LCZO, being described as a use of the "Commercial District" incorporated into SUBAREA A of TSPD. Prior to annexation by City, Developer shall not be required to obtain any further land use (zoning) approval from City with respect to Storage Units.

(D) City understands and agrees that the uses for Lot 1 and Lot 7 of SUBAREA A, at all times prior to annexation and the availability of connections to City-supplied water and central sewer service, and consistently with Section 6(C) of this Agreement, may be served by water lines supplied by Lincoln Rural Water Service ("LCRW") and wastewater holding tanks, installed and operated in accord with Lincoln County ordinances and state law.

(E) City and Developer mutually recognize that specific land uses have not yet been identified for Lots 2, 3, 4, 5 and 6 of SUBAREA A. For any such uses as are proposed prior to annexation by City, Developer additionally agrees that development of such Lots will proceed as if zoned "General Business District" under City's Zoning Ordinance ("HZO"), while being constrained as to uses also by the provisions of Developer's proposed Ordinance for TOM SAWYER PLANNED DEVELOPMENT DISTRICT, as may be hereafter adopted by LCBOC. Prior to annexation and the availability of City-supplied water and central sewer service, and as also provided for in Section 6(D) of this Agreement, any uses established upon these lots may be served in the same manner as provided in Subsection D, above.

(F) City understands and agrees that Developer further plans and intends to develop the lots in SUBAREA B into single-family residential use, consisting of approximately six (6) lots. Developer represents and warrants to City that, prior to annexation, such single-family residential development will proceed in the ordinary course and be otherwise consistent with the provisions of LCZO, "RR- Rural Residential District," in that each lot will be in excess of one acre and, upon qualification and satisfactory proofs, each single family residence thereon will be served by an individual wastewater treatment facility (septic tank), installed in accordance with applicable State law and Lincoln County ordinance. It is recognized that such use is envisioned

by Section 1406 of City's Ordinance 2006-09, adopted August 21, 2006. Prior to annexation by City, Developer shall not be required to obtain any further land use (zoning) approval from City with respect to residential uses in SUBAREA B.

(G) Upon annexation in the manner anticipated by Section 6(B) (or the availability of City utility service connections at the edge of Property if available prior to annexation), then as more fully provided in Section 6(E) of this Agreement, the active use of water services connections with LCRW, holding tanks, or septic tanks, shall be terminated as soon as practicable; connections shall be made to City's infrastructure for such services (City's prevailing charges for connections shall be paid to City by Developer at the time of sale and will be accepted by City as the full and proper amount notwithstanding any later increase in the amount of the connection fee.) From and after annexation, any further development of TSPD shall be in compliance with applicable City ordinances.

SECTION 4. Preliminary, Final & Platting Approval for Development.

(A) City and Developer mutually agree that following requisite zoning approvals for TSPD under LCZO, including the AIDP, by LCP&Z and LCBOC, Developer shall prepare and submit to City, for approval by the appropriate board or officer of City ("City Approvals"), consistent with City's Subdivision Ordinance ("HSO"), the following items:

1. Preliminary Plan for Platting, with supporting papers for grading and drainage;
2. Final Plan for Development; and
3. Plat of TSPD, incorporating into such plat the provisions of a Final Development Plan ("FDP"), which FDP shall also be approved by LCP&Z prior to recording of such Plat.

Copies of the items listed shall be simultaneously provided to Lincoln County Planning Office when submitted to City for approval. Based on the provisions and mutual understandings of this Agreement, City agrees not to delay or prevent processing of any plan or plat submitted for City Approvals, or the development of TSPD prior to annexation, based on the assertion that such development or the further development of the Property is "premature," or any other grounds that may be alleged or asserted under City's Ordinance 2006-09.

SECTION 5. Ordinances to Apply to Property.

(A) *County Ordinances.* City and Developer mutually agree that, prior to annexation of Property by City, the following provisions of Lincoln County ordinances shall pertain to the development thereof, as being within the current jurisdiction of Lincoln County:

1. Developer will seek and obtain all building permits from Lincoln County;
2. Developer agrees the provisions of International Building Code ("IBC"), as in force within Lincoln County, shall govern the standards for all construction and development within TSPD completed prior to Annexation.
3. Developer agrees building inspections will be carried out by Lincoln County upon the Property, with Lincoln County to furnish results to City.

4. Developer will provide a copy of this Agreement to Lincoln County Planning Office.

(B) *City Ordinances.* City and Developer further agree that prior to annexation of Property by City, the following provisions of City's ordinances, having been provided for by the PRZ (007-REZ-001) and the AIDP, shall in all events and circumstances pertain to the development thereof:

1. City's Subdivision Ordinance shall govern and control the development of both SUBAREA A and SUBAREA B, except that prior to the availability of central sewer to the Property (whether prior to or subsequent to annexation), Developer will be permitted to develop SUBAREA B with the use of septic tanks as contemplated by Section 4(F), above.
2. City's Zoning Ordinance entitled "Architectural Standards, General Landscaping and Buffer Requirements" (Section 11.11) shall govern and control the development of SUBAREA A and, as pertinent, SUBAREA B, including but not limited to expressed "Architectural Standards" for non-residential buildings abutting Minnesota Avenue. Similarly, Developer shall observe the requirements of "Residential Landscape and Buffer Requirements" with respect to any pre-annexation residential development permitted by this Agreement.
3. Certain other aspects of City's Zoning Ordinance are also agreed to be applicable and shall control the development of TSPD, including such provisions of Article 11, "Additional Use Regulations" as have been cited in and incorporated by reference into the County's Ordinance for TSPD.

SECTION 6. Developer's Improvements; Annexation by Voluntary Petition.

(A) In addition to any other requirements assumed by Developer under this Agreement, or imposed upon Developer by applicable law or ordinance, Developer will cause all of the Lots within SUBAREA A and SUBAREA B of TSPD to be developed and, after occupation of improvements upon such Lots, served by infrastructure improvements consistently with the following provisions of this Section.

(B) Future Annexation by Voluntary Petition of Owner. Consistent with the premises of this Agreement, Developer and Owner agree to cause all lots, areas, and portions of Property to become annexed to City, by means of the landowner's petition as described in SDCL § 9-4-1, immediately upon the occasion that (a) the City's limits shall be deemed, by City, to be contiguous to any portion of Property, *and* (b) City has extended utility services to any point allowing for connections to Property. For this purpose, Developer and Owner state and warrant the Property is on the date of this Agreement owned in fee by TOM SAWYER ADVENTURES, LLC (previously identified as "Owner"). Further, City and Developer agree that this Agreement is in the nature of a agreement for annexation and development within the meaning of SDCL § 9-4-1.1, and that said Owner, by express consent and agreement hereto as evidenced by Owner's signature below, agrees that this Agreement shall be construed as such voluntary petition for purposes of SDCL § 9-4-1, binding upon all successors in interest and all proprietors and future owners acquiring title from Owner, this consent of Owner further being irrevocable until such

occasion of contiguity shall have occurred and City shall have approved and acted upon annexation, or City shall have failed to approve such annexation in a manner required by law. *For such purposes, this Agreement in general and this Section 6(B), in particular, when recorded with the Lincoln County Register of Deeds Office, shall be deemed a covenant of intended benefit to the Property, running with the land, binding upon Owner, and Owner's grantees and successors in title and interest.*

(C) Developer & Owner to Give Actual Notice of this Agreement. In addition to record notice contemplated in Section 6(B), Developer and/or Owner agree to give actual written notice of this Agreement, and the obligations and duties arising hereunder, to the first successor in interest to Owner's interests in all, any or each part of the Property, now or as may hereafter be legally described at any time.

(D) Pre-Annexation Improvements & Services: Notwithstanding anything to the contrary under City's ordinances, City and Developer agree that prior to annexation and for purposes of accommodating Developer's eventual full development of the Property, apart from the time when City might be able to annex same in accord with Section 6(B), the following infrastructure improvements or services may be installed and employed within TSPD, at Developer's cost and expense:

1. *Water Service:* Developer will pre-install an internal water distribution system for TSPD (according to City specifications), and service lines to those uses as are actually developed prior to annexation. Developer will cause the water main to be fully cleaned, inspected, disinfected, pressure tested, and charged in accord with requirements of SD Department of Environment & Natural Resources (DENR). The pre-installed water distribution system will be later connected to City (at which time ownership thereof will transfer to City. Prior to City connection, Developer may own and use the water lines by connection to LINCOLN COUNTY RURAL WATER ("LCRW"). The system will include fire hydrants (per City requirements), and Developer is to advise Harrisburg Fire Department of the need to use drop tanks, per LCRW requirements. Developer shall pay any current City hookup charge or cost then pertaining (presently, a \$750.00 fee) to City at the time of sale.
2. *Sewer Service:* Developer will pre-install sewer mains and manholes within TSPD, consistently with Section 803 of HSO. To the extent a lot within either subarea of TSPD is actually built and developed into a use for which sanitary sewer service is required, the service line from the structure shall also be substantially installed and pre-connected to the main. The main will be constructed to or from an invert elevation furnished by City, with Developer paying City's engineer, or reimbursing City, the reasonable cost of determining such elevation (as separately agreed). The sewer mains must be pressure tested and mandrelled (at Developer's cost) before connection to City's service. Developer shall pay any current City hookup charge or cost then pertaining (presently, a \$250.00 fee) to City at the time of sale.
3. *Streets:* Developer will construct all streets within TSPD as an urban-section street, with curb and gutter, consistently with HSO. Developer will further

maintain the driving surface of the streets consistent with practices employed by City on similar street surfaces (if asphalt, the streets are to be chip-sealed periodically until annexed). Developer, whether by means of an association of lot owners or otherwise, will also cause the streets to be cleared of snow until the time of annexation by City.

4. *Street Lighting:* City and Developer agree that street lighting with TSPD will be installed in manner and timing required by HSO, at Developer's expense.
5. *Storm Water Collection:* Storm water is to be gathered, routed, collected and retained or detained consistently with the plans for which City Approvals are given. All storm water collection facilities will be designed in accordance with HSO, and built or installed at Developer's cost.
6. *Sidewalks:* City and Developer agree that the construction of sidewalks within TSPD shall proceed in manner and timing required by HSO, at Developer's expense, except if necessary due to weather, construction may be postponed six months following occupancy.

(E) Post-Annexation Improvements & Services:

1. *Water:* As soon as practicable after annexation in accord with Section 6(B), or when City-supplied water becomes available at Property's edge, if such is prior to annexation, Developer shall cause the water main within the Property to be hooked to City supply. Upon final satisfactory inspection BY THE CITY, ownership of the main and hydrants shall transfer to City. Rural water supply or use shall be discontinued at such time, at the expense of Developer, Owner or owners of the respective lots.
2. *Sewer Service:* As soon as practicable after annexation in accord with Section 6(B), or at such time when City supplied central sewer becomes available at Property's edge, if prior to annexation, Developer shall cause the sewer main and manholes within the Property to be inspected and tested in accord with requirements of South Dakota Department of Environment and Natural Resources and City and hooked to City service. Upon final satisfactory inspection BY THE CITY, ownership of the sewer main shall transfer to City.
3. *Streets:* Upon satisfactory inspection BY THE CITY, ownership of the streets within TSPD will transfer to City, the City reserving the right to thereafter fund the maintenance of streets by means of assessment to frontage.
4. *Street Lighting:* City and Developer agree street lighting with TSPD will be installed in manner and timing required by HSO, at Developer's expense, except post-annexation, City will assume any "rental charges" imposed by the energy provider serving TSPD.
5. *Storm Water Collection:* Upon satisfactory inspection BY THE CITY, ownership of all storm water collection, retention and detention facilities within TSPD will transfer to City.
6. *Sidewalks:* City and Developer agree the construction of sidewalks within TSPD is to proceed in manner and timing required by HSO, at Developer's expense; if

necessary due to weather conditions, construction may be postponed six months following occupancy.

(F) Interceptor Cost Recovery: City has forecasted the Property to be part of City's future sewer basin 2-A (the "Basin 2-A Project"). City further presently estimates a future cost recovery for interceptor sewer upsizing, applied to the current land area of basin 2-A, at \$1,500.00 per acre (the "Cost Recovery Estimate"). The cost recovery will be collected at or about the time of sewer service commencement to the Property. City and Developer understand the current Cost Recovery Estimate may require revision as costs change and the interceptor sewer is installed at a future date ("Actual Cost Recovery"). Developer and Owner both agree that in the event all or any part of the Property is sold prior to the date on which cost recovery could be assessed by City with respect to the Property, then and in such event, a pro rata share of the Cost Recovery Estimate (as most recently revised by City), or the Actual Cost Recovery (if then built), shall be collected by Developer or Owner, or otherwise paid over to City, to be held in escrow by City pending completion of the Basin 2-A Project. Any such payments transferred to City, based on the Cost Recovery Estimate (at the time of Property sale, in whole or in part), will be accepted by City as the full and proper amount notwithstanding any later increase in the amount of Actual Cost Recovery otherwise applicable. In the event the Actual Cost Recovery is less than the amount of any paid Cost Recovery Estimate, City will refund the excess difference to Developer or Owner (original payor, as the case may be), with any interest earned thereon.

(G) Post-Annexation Zoning: Upon or as soon as practicable after eventual annexation, City, Developer and Owner mutually agree that SUBAREA A of TSPD may be zoned "GB: General Business District" while SUBAREA B may be zoned "R-1: Single Family Residential District," each as provided for by HZO.

SECTION 8. Miscellaneous Provisions.

(A) The respective rights, responsibilities and duties of the parties under this Agreement may be enforced or compelled by order or judgment of the Circuit Court in and for Lincoln County, Second Judicial Circuit, having jurisdiction over the Property, City and Developer.

(B) This Agreement shall be construed and interpreted in accordance with South Dakota law.

(C) This Agreement represents the entire agreement of Developer and City, and of Owner as and where so referenced, as to the subjects expressed. This Agreement may be amended, modified, or terminated by a further writing between and signed by Developer, Owner and City.

So Agreed, by and between Developer, Owner and City the date(s) below written, due authority of each of the parties and their representatives below being now warranted:

DAKOTALAND BUILDERS, INC.

By: [Signature]
Mike Hoffman, President

Date: 3-23-07

TOM SAWYER ADVENTURES, LLC.

By: [Signature]
Mike Hoffman, Manager

Date: 3-23-07

CITY OF HARRISBURG

By: [Signature]
Reed Ramstad, Mayor

Date: 4-2-07

Attest:
[Signature]
Finance Officer

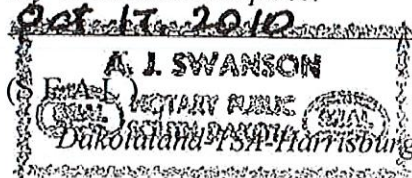
(SEAL)

ACKNOWLEDGMENTS:

State of South Dakota)
 :SS.
County of Lincoln)

Before me, the undersigned officer, the date above written, personally appeared MIKE HOFFMAN, known to me and being first duly sworn, stated that being duly authorized so to act, by his signature, DAKOTALAND BUILDERS, INC. and TOM SAWYER ADVENTURES, LLC, and each of them, have executed the foregoing instrument for the purposes therein stated.

My Commission Expires:



[Signature]
NOTARY PUBLIC - SOUTH DAKOTA

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State of South Dakota)

:ss.

County of Lincoln)

Before me, the undersigned officer, the date above written, personally appeared REED RAMSTAD, known to me and being first duly sworn, stated that being duly authorized so to act as Mayor, the CITY OF HARRISBURG, by his signature as Mayor, has executed the foregoing instrument for the purposes therein stated.

My Commission Expires:

February 10, 2012

Alysia A. Broughton

NOTARY PUBLIC - SOUTH DAKOTA

(SEAL)

